

**Letter of Findings: 65-20191335
Indiana Oversize/Overweight Proposed Assessment
For the Year 2018**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Indiana Department of Revenue's (the "Department") official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

The Department sent Motor Carrier a proposed assessment for two oversize/overweight civil penalties. The Department determined that Motor Carrier should only be assessed a penalty for not obtaining a permit. Therefore, Motor Carrier's protest is sustained in part and denied in part.

ISSUE

I. Motor Vehicles - Oversize/Overweight Penalty.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-1-1; IC § 9-20-1-1; IC § 9-20-1-2; IC § 9-20-4-1; IC § 9-20-6-11; IC § 9-20-18-14.5; *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer protests the assessment of two oversize/overweight civil penalties.

STATEMENT OF FACTS

Taxpayer is an Indiana-based motor carrier. On June 1, 2018, Taxpayer's commercial motor vehicle was cited by the Indiana State Police ("ISP") for an oversize violation. As a result, the Department issued Taxpayer a proposed assessment for two oversize/overweight ("OS/OW") civil penalties. Taxpayer disagreed with the assessment of penalties and submitted a protest to that effect. Taxpayer waived their right to an administrative hearing. This Letter of Findings results. Further facts will be supplied as necessary.

I. Motor Vehicles - Oversize/Overweight Penalty.

DISCUSSION

Taxpayer protests the imposition of two civil penalties. The Department based its proposed assessment on a report provided by the ISP. The ISP report showed that Taxpayer, while transporting logs, was in excess of the gross allowable weight under IC § 9-20-4-1. Taxpayer argued that the Department did not offer a permit for divisible loads of lumber at the time of the traffic stop.

As a threshold issue, it is Taxpayer's responsibility to establish that the existing proposed assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "[t]he notice of proposed assessment is prima facie evidence that the [D]epartment's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

According to IC § 9-20-1-1, "[e]xcept as otherwise provided in [IC Art. 9-20], a person, including a transport operator, may not operate or move upon a highway a vehicle or combination of vehicles of a size or weight exceeding the limitations provided in [IC Art. 9-20]."

According to IC § 9-20-1-2, "an owner of a vehicle . . . may not cause or knowingly permit to be operated or moved upon a highway a vehicle or combination of vehicles of a size or weight exceeding the limitations provided in [IC Art. 9-20]."

According to IC § 9-20-6-11(b), "[a] person may not violate the terms or conditions of a special permit."

IC § 9-20-18-14.5 authorizes the Department to impose civil penalties against motor carriers that obtain a permit under IC Art. 9-20 and violate IC Art. 9-20 ("Permit Violation Civil Penalty") or are required, but fail, to obtain a permit under IC Art. 9-20 ("No Permit Civil Penalty"). IC § 9-20-18-14.5(c) provides that a person "a person who transports vehicles or loads subject to this article and fails to obtain a permit required under this article is subject to a civil penalty of not more than five thousand dollars (\$5,000) for each violation." According to IC § 9-20-18-14.5(b), the Department may subject a person to a civil penalty if the person "obtains a permit under" IC Art. 9-20 and violates IC Art. 9-20 by being overweight or oversize.

IC § 6-8.1-1-1 states that fees and penalties stemming from IC Art. 9-20 violations are a "listed tax." According to IC § 9-20-18-14.5(a)(3), these listed taxes are in addition to and separate from any arrangement or agreement made with a local court or political subdivision regarding the traffic stop.

In this case, the Department issued Taxpayer a Permit Violation Civil Penalty and a No Permit Civil Penalty. According to the ISP report, Taxpayer transported a total gross weight of 89,500 pounds, which is over the total gross weight allowed under IC § 9-20-4-1. Moreover, despite Taxpayer traveling on a non-interstate highway, IC § 9-20-4-2 is inapposite as the gross weight was above 10 percent more than the statutory limit. The Department offers a permit that allows a carrier to transport at a gross weight heavier than the statutory limit. Department records, however, show that Taxpayer did not have a permit at the time the traffic stop began. Taxpayer argued that the Department did not offer a permit for divisible loads of lumber at the time of the traffic stop. On or about July 1, 2017, the Department began offering an overweight commodity permit for certain types of divisible loads, including for lumber. The traffic stop in question occurred June 1, 2018, almost one year later.

It follows that Taxpayer failed to obtain a permit before transporting cargo that required a permit; therefore, it is appropriate for Taxpayer to receive a No Permit Civil Penalty. However, because Taxpayer did not have a permit at the time of the traffic stop, Taxpayer should not have been assessed a Permit Violation Civil Penalty. Based on this review, the Department will generate an updated bill for Taxpayer.

FINDING

Taxpayer's protest is sustained in part and denied in part.

January 24, 2020

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